

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

TODD ASHBACH,

Defendant.

CASE NO. CR17-0026-JCC

ORDER ON MOTION TO
SUPPRESS

This matter comes before the Court on Defendant Todd Ashbach's motion to suppress (Dkt. No. 30). Having thoroughly considered the parties' briefing and the relevant record, the Court DENIES the motion for the reasons explained herein.

I. BACKGROUND

Ashbach is charged with one count each of Felon in Possession of a Firearm; Possession of an Unregistered Device, a silencer; Possession of Heroin with Intent to Distribute; and Possession of Methamphetamine with Intent to Distribute. (Dkt. No. 15 at 1–3.) Police seized all of the items while searching Ashbach's motel room and two vehicles in his possession. (Dkt. Nos. 31 at 5, 35 at 5–6.) Police conducted the searches after obtaining a search warrant. (Dkt. No. 32.) Officer Justin Gann of the Lynwood Police Department requested the warrant based upon probable cause evidence the officer collected the day prior that the weapons and drugs would be located in Ashbach's vehicles and the motel room. (*Id.*)

1 Officer Gann was on patrol the day prior for the Special Operations Section of the
2 Lynwood Police Department. (Dkt. No. 31 at 1–2.) He noticed a Volkswagen parked in a
3 handicapped spot at a motel without a visible handicap placard. (*Id.*) Upon the officer’s inquiry,
4 motel staff indicated that the vehicle belonged to someone in Ashbach’s room, and there had
5 been significant foot traffic to and from the room throughout the day. (*Id.* at 2.) Officer Gann
6 knocked on the door, and an unidentified female, later identified as J.E., answered. (*Id.*) She said
7 the car was hers and she would move it. (*Id.*) J.E. and the officer proceeded to the parking lot,
8 where the officer observed Ashbach come downstairs and place a bag into a BMW. (*Id.*)
9 Ashbach then approach J.E. and the officer, who were still discussing the car and J.E.’s identity.
10 (*Id.*) The officer asked Ashbach and J.E. to produce some identification relating to them and/or
11 the illegally parked Volkswagen. (*Id.* at 3.) Ashbach produced a fake I.D. (*Id.*) Based on the fake
12 I.D., the officer arrested Ashbach. (*Id.* at 4.) During a resulting search incident to Ashbach’s
13 arrest, the officer recovered \$9,000 in cash and a bank debit card with Ashbach’s true name on it.
14 (*Id.* at 4.)

15 Ashbach and J.E. later consented to a search of Ashbach’s room, signing a statement to
16 that effect. (*Id.*) During the search, Officer Gann, along with assisting officers, recovered drug
17 paraphernalia, body armor, and a jacket bearing a Seattle police badge. (*Id.* at 5.) They also
18 recovered a small amount of drugs from J.E.’s purse. (*Id.*) Based upon this evidence, Officer
19 Gann arrested Ashbach’s companion. (*Id.*) J.E. told officers after she arrived at the station that
20 they missed a handgun with a silencer and armor piercing ammunition in the motel room. (*Id.*)
21 She also indicated there were guns in the Volkswagen and a large quantity of drugs in the BMW.
22 (*Id.*) Officer Gann impounded the vehicles and instructed the motel to secure the room until he
23 could acquire a search warrant. (Dkt. No. 32 at 9.) Another officer deployed a drug-sniffing dog
24 on the impounded vehicles. (*Id.*) The dog detected drugs on both vehicles. (*Id.*)

25 Based upon the evidence described above, Officer Gann sought a warrant to search the
26 impounded vehicles and to reenter and search the motel room. (Dkt. No. 32) (copy of search

1 warrant). The resulting search led to the discovery of three handguns, a silencer, a sawed-off
2 shotgun, fully loaded ammunition magazines, armor piercing bullets, 900 grams of heroin and
3 498 grams of methamphetamine. (Dkt. No. 35 at 5–6.)

4 Ashbach moves to suppress the evidence on the basis that they were the fruits of an
5 unlawful *Terry* stop and/or supported by a search warrant issued without probable cause. (Dkt.
6 No. 31 at 8–9.) He also requests an evidentiary hearing on the matter. (Dkt. No. 30.)¹

7 **II. DISCUSSION**

8 **A. Search Incident to Arrest**

9 Ashbach asserts that his arrest was unlawful because it was based on an impermissible
10 *Terry* stop. (*Id.* at 6.) He claims the *Terry* stop was impermissible because Officer Gann lacked
11 reasonable suspicion to detain him at the time the stop commenced and that his detention lasted
12 too long. (*Id.* at 6–7.) Under *Terry*, an officer has reasonable suspicion supporting a brief
13 investigatory detention when “specific, articulable facts . . . together with rational inferences
14 from those facts” warrant detention. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). Further, the detention
15 period cannot extend beyond the time necessary to investigate whether a crime has been
16 committed. *Florida v. Royer*, 460 U.S. 491, 500 (1983).

17 Both of Ashbach’s assertions suffer from the same logical infirmity—that Ashbach’s
18 detention commenced when the officer first knocked on his motel room door. (Dkt. No. 31 at 2.)
19 Detention begins when “in view of all the circumstances surrounding the incident, a reasonable
20 person would have believed that he was not free to leave.” *I.N.S. v. Delgado*, 466 U.S. 210, 215
21 (1984) (internal quotation omitted). Here, a reasonable person would conclude that detention
22 occurred much later than when the officer first knocked on Ashbach’s door.

23 By Ashbach’s own admission, after Officer Gann knocked on his door, the officer
24 followed J.E. into the hall to discuss the car situation. (Dkt. No. 31 at 2.) At some point later,

25
26 ¹ Ashbach only requests oral argument in his motion to suppress. (*Id.*) The Court later
clarified this to mean an evidentiary hearing.

1 Ashbach stepped out of the room, first encountering the officer while he was speaking with J.E.
2 about the car. (*Id.*) After briefly participating in the discussion, Ashbach left. (*Id.*) He went to
3 his BMW and placed a bag into it. (*Id.*) Ashbach again briefly spoke with the officer after doing
4 so. (*Id.* at 3.) Again, Ashbach left. (*Id.*) He went to his room to produce the “paperwork or ID’s
5 about themselves or the vehicle” that the officer requested. (*Id.*)² After handing the officer his
6 identification, Ashbach left again, heading initially to a soda machine and when he found that it
7 was not working, to the motel lobby. (*Id.* at 3.)

8 Officer Gann suspected the identification was fake. (*Id.*) It could easily be torn, the bar
9 code was misaligned, and the graphics were not fully see through. (Dkt. No. 35 at 3).
10 Furthermore, the physical description did not match Ashbach. (Dkt. No. 31 at 3.) The officer
11 sought out Ashbach. (*Id.*) He found him in the motel lobby, and instructed him to “take a seat”
12 while he continued to investigate the matter. (*Id.*) This is the point where a reasonable person
13 would believe he was being detained, as the officer commanded him to stay put. Further, at that
14 point, detention was lawful. Officer Gann had reasonable suspicion that Ashbach had
15 committed a crime. *See U.S. v. Hensley*, 469 U.S. 221, 226 (1985) (describing reasonable
16 suspicion); Wash. Rev. Code § 66.20.200 (possession of fake identification is a misdemeanor);
17 Wash. Rev. Code. § 46.61.020 (giving a false name to an officer while “in charge” of a vehicle
18 is a misdemeanor). Then, once Officer Gann confirmed with dispatch that Ashbach’s
19 identification was fake, he arrested him. (Dkt. No. 31 at 3.) The officer had probable cause to do
20 so. *See U.S. v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007). As a result, the subsequent search
21 incident to arrest was also lawful. *See U.S. v. Tarazon*, 989 F.2d 1045, 1051 (9th Cir. 1993).

22 The Court DENIES Ashbach’s motion to suppress evidence collected during the search
23 incident to his arrest.

24 //

25
26 ² A request for one’s identification does not transform a consensual encounter into
detention. *I.N.S.*, 466 U.S. at 216.

1 **B. First Search of Room**

2 Ashbach asserts that because his detention and later arrest were unlawful, his consent to
3 search his room was ineffective. (Dkt. No. 31 at 8.) Under the “fruits of the poisonous tree”
4 doctrine, evidence obtained subsequent to a Fourth Amendment violation is tainted by the
5 violation and inadmissible, despite voluntary consent, unless the evidence is “purged of the
6 primary taint.” *Wong Sun v. U.S.*, 371 U.S. 471, 488 (1963). Ashbach’s detention and later
7 arrest were lawful, so there is no constitutional violation requiring suppression. Further,
8 Ashbach does not otherwise assert that the consent form he signed was ineffective. (Dkt. No. 31
9 at 4, 8.)

10 The Court DENIES Ashbach’s motion to suppress evidence collected during the first
11 search of his room.

12 **C. Seizure of Cars**

13 Ashbach asserts that, without a warrant, Officer Gann could not have lawfully impounded
14 his cars. (*Id.* at 8.) Therefore, the evidence gathered from the subsequent dog sniff must be
15 suppressed. (*Id.*) The Court disagrees. So long as Officer Gann had probable cause that the cars
16 contained illegal contraband, he could immediately search them, or seize them for later search.
17 *Chambers v. Maroney*, 399 U.S. 42, 51–52 (1970). No warrant was required. *Id.* Further, even if
18 a warrant had been required, a dog sniff of a vehicle’s exterior is not a search. *Illinois v.*
19 *Cabellas*, 543 U.S. 405, 408-09 (2005).

20 Ashbach contends Officer Gann lacked probable cause that the cars contained illegal
21 contraband because the officer relied on statements from J.E., whom the officer had already
22 determined was not credible. (Dkt. No. 31 at 9.) Again, the Court disagrees. While Officer Gann
23 determined J.E. had not been truthful about her identity, she had compelling reasons to lie
24 because of her outstanding warrants. (*Id.* at 5.) She had no compelling reason to lie about what
25 may be in the cars. Doing so would not serve her interests. Had the officers located contraband
26 in the Volkswagen, she would have been potentially subject to criminal charges based on what

1 they found. Had they not, she would have been subject to criminal charges for providing false
2 information to an officer. Furthermore, Officer Gann had corroborating information. He
3 observed Ashbach place a bag into the BMW and found contraband in Ashbach's motel room.
4 (*Id.* at 2.)

5 The Court DENIES Ashbach's related motion to suppress the evidence obtained from the
6 seizure and subsequent dog sniff of the vehicles.

7 **D. Search of Cars and Second Search of Room**

8 Finally, Ashbach asserts that the warrant supporting the search of his cars and the second
9 search of his room was not supported by probable cause. (Dkt. No. 31. at 9.) He claims that all
10 resulting evidence from those searches should be suppressed. (*Id.*) At issue is whether "the
11 magistrate had a substantial basis for concluding that the affidavit in support of the warrant
12 established probable cause." *U.S. v. Angulo-Lopez*, 791 F.2d 1394, 1396 (9th Cir. 1986).

13 According to Ashbach, Officer Gann's affidavit contained evidence resulting from
14 impermissible searches. (Dkt. No. 31 at 9–11.) Once that evidence is excised, all that is left are
15 unreliable statements from J.E. that that drugs and guns would be found in the vehicles and
16 room. (*Id.* at 10–11.) As the Court has already noted, none of the evidence gathered in the earlier
17 searches was impermissibly obtained, so it was properly considered by the magistrate. Nor does
18 the Court view the information from J.E. as unreliable.

19 When considering informant information included in an affidavit for a warrant, the
20 informant's reliability must be assessed based on the totality of the circumstances. *Illinois v.*
21 *Gates*, 462 U.S. 213, 230-31 (1983). While J.E. did initially provide a false identity to Officer
22 Gann, based upon the totality of circumstances, the informant appeared reliable. First, her
23 statements were corroborated by \$9,000 in cash found on Ashbach, along with body armor, an
24 officer's badge, and drug paraphernalia found during the initial consent search of the room. (Dkt.
25 Nos. 31 at 4–5, 35 at 4–5.) Officer Gann's observation that Ashbach placed a bag into his vehicle
26 (Dkt. No. 31 at 2) further corroborates her statements. Corroboration is the most powerful

1 method to confirm veracity. *U.S. v. Bishop*, 264 F.3d 919, 925 (9th Cir. 2001). Second, J.E.’s
2 statements were against her penal interests. She was closely associated with Ashbach, sharing a
3 motel room and initially claiming ownership of the Volkswagen. (Dkt. No. 31 at 2.) Any
4 contraband officers located could potentially also be used against her. Conversely, if officers
5 determined she was lying, she exposed herself to the additional crime of providing false
6 information. *See Angulo-Lopez*, 791 F.2d at 1397 (veracity may also be established by statements
7 against penal interest). Finally, she came by the information through first-hand knowledge. *See*
8 *Bishop*, 264 F.3d at 925 (first-hand knowledge is more compelling than hearsay).

9 The magistrate had a substantial basis for concluding that Officer Gann’s affidavit
10 established probable cause to search the vehicles and his room for drugs and guns. The Court
11 DENIES Ashbach’s motion to suppress the evidence gathered from the search of the vehicles
12 and the second search of his room.

13 **E. Evidentiary Hearing**

14 “An evidentiary hearing on a motion to suppress need be held only when the moving
15 papers allege facts with sufficient definiteness, clarity, and specificity to enable the trial court to
16 conclude that contested issues of fact exist.” *U.S. v. Howell*, 231 F.3d 615, 620 (9th Cir. 2000).
17 The only disputed fact the Court can glean from Ashbach’s motion is whether Officer Gann’s
18 initial contact was pretextual. (Dkt. No. 31 at 7) (describing Ashbach’s arrest as “predicated on a
19 lie”). A minor infraction may serve as pretext for a *Terry* stop, depending on the “potential risk
20 to public safety associated with the nature of the offense.” *U.S. v. Grigg*, 498 F.3d 1070, 1083
21 (9th Cir. 2007). While knowledge that Ashbach parked a car in a handicapped spot without the
22 required placard likely would not satisfy this standard, once this knowledge is coupled with the
23 knowledge the officer acquired from motel staff regarding the significant foot traffic to and from
24 Ashbach’s room (Dkt. No. 31 at 2), the standard may have been met. Regardless, the *Terry* stop
25 began long after the officer first approached Ashbach’s motel room. Therefore, whether the
26 officer’s initial contact was a pretext is not material to the lawfulness of Ashbach’s *Terry* stop

1 and resulting arrest. Absent other contested facts, the Court sees no basis for an evidentiary
2 hearing.

3 To the extent Ashbach requests an evidentiary hearing, that request is DENIED.

4 **III. CONCLUSION**

5 For the foregoing reasons, Ashbach's motion to suppress (Dkt. No. 30) is DENIED.

6 DATED this 5th day of October 2017.

7
8
9 

10 John C. Coughenour
11 UNITED STATES DISTRICT JUDGE
12 TRICT JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26